

1                                   **UNITED STATES DISTRICT COURT**  
2                                   **DISTRICT OF NEVADA**

3 CINDY BRADEN,

4           Plaintiff

5 v.

6 STATE FARM MUTUAL AUTO  
7 INSURANCE COMPANY,

8           Defendant

Case No.: 2:18-cv-01741-APG-NJK

**Order Denying Defendant's Motion to  
Dismiss**

[ECF No. 6]

9           Defendant State Farm Mutual Automobile Insurance Company moves to dismiss two of  
10 the four causes of action in plaintiff Cindy Braden's complaint. State Farm argues that Braden's  
11 claim for violations of the Nevada Unfair Claim Practices Act ("UCPA") fails to identify the  
12 specific subsections that were violated and lacks a sufficient factual basis. *Id.* State Farm also  
13 argues that Braden's unjust enrichment claim should be dismissed because it is necessarily  
14 precluded by her breach of contract claim. *Id.*

15           I deny State Farm's motion to dismiss. The defendants can reasonably infer that Braden  
16 is alleging violations of Nevada Revised Statutes § 686A.310 subsections (c) and (e). Braden's  
17 unjust enrichment claim is pleaded in the alternative to her contractual claim. And Braden  
18 supports her claims with sufficient facts in her complaint.

19 **I. BACKGROUND**

20           Braden claims she suffered serious injuries from an automobile accident on July 17,  
21 2016. ECF No. 1. Although the other driver was at fault, he did not have insurance coverage.  
22 Braden, however, had an uninsured motorist coverage policy with State Farm. Braden alleges  
23 she incurred nearly \$70,000 in medical expenses due to the accident and she will require

1 additional treatment in the future, including reconstructive surgery that will cost approximately  
2 \$351,000. On March 23, 2018, Braden demanded that State Farm pay under her policy. State  
3 Farm requested an independent medical examination, to which Braden complied. On June 1,  
4 2018, State Farm offered to pay Braden \$10,362. *Id.* at 14-16.

5 Braden sues State Farm for failure to pay in accordance with the insurance policy. She  
6 asserts four claims: (1) breach of contract, (2) contractual breach of the implied covenant of good  
7 faith and fair dealing, (3) violation of the UCPA; and (4) unjust enrichment in the alternative.  
8 Braden seeks punitive damages under the first three claims, arguing that State Farm’s conduct  
9 was malicious and oppressive. *Id.* at 16-19.

## 10 **II. LEGAL STANDARD**

11 A properly pleaded complaint must provide a “short and plain statement of the claim  
12 showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2); *Bell Atl. Corp. v. Twombly*,  
13 550 U.S. 544, 555 (2007). While Rule 8 does not require detailed factual allegations, it demands  
14 more than “labels and conclusions” or a “formulaic recitation of the elements of a cause of  
15 action.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). The complaint must set forth coherently  
16 “who is being sued, for what relief, and on what theory, with enough detail to guide discovery.”  
17 *See, e.g., McHenry v. Renne*, 84 F.3d 1172, 1178 (9th Cir. 1995). “Factual allegations must be  
18 enough to rise above the speculative level.” *Twombly*, 550 U.S. at 555. To survive a motion to  
19 dismiss, a complaint must “contain[] enough facts to state a claim to relief that is plausible on its  
20 face.” *Iqbal*, 556 U.S. at 696 (internal quotation marks and citation omitted).

21 District courts must apply a two-step approach when considering motions to dismiss. *Id.*  
22 at 679. First, the court must accept as true all well-pleaded factual allegations and draw all  
23 reasonable inferences from the complaint in the plaintiff’s favor. *Id.*; *Brown v. Elec. Arts, Inc.*,

1 724 F.3d 1235, 1247–48 (9th Cir. 2013). Legal conclusions, however, are not entitled to the  
2 same assumption of truth even if cast in the form of factual allegations. *Iqbal*, 556 U.S. at 679;  
3 *Brown*, 724 F.3d at 1248. Mere recitals of the elements of a cause of action, supported only by  
4 conclusory statements, do not suffice. *Iqbal*, 556 U.S. at 678.

5       Second, the court must consider whether the factual allegations in the complaint allege a  
6 plausible claim for relief. *Id.* at 679. A claim is facially plausible when the complaint alleges  
7 facts that allow the court to draw a reasonable inference that the defendant is liable for the  
8 alleged misconduct. *Id.* at 663. Where the complaint does not permit the court to infer more than  
9 the mere possibility of misconduct, the complaint has “alleged—but it has not shown—that the  
10 pleader is entitled to relief.” *Id.* at 679 (internal quotation marks and citation omitted). When the  
11 claims have not crossed the line from conceivable to plausible, the complaint must be dismissed.  
12 *Twombly*, 550 U.S. at 570. “Determining whether a complaint states a plausible claim for relief  
13 will . . . be a context-specific task that requires the [district] court to draw on its judicial  
14 experience and common sense.” *Iqbal*, 556 U.S. at 679.

### 15 **III. VIOLATION OF UNFAIR CLAIMS PRACTICES ACT**

16       State Farm argues that the complaint does not identify which specific subparts of Nevada  
17 Revised Statutes § 686A.310 it allegedly violated, so it does not know which subparts serve as  
18 the foundation for the cause of action. *Id.* at 6-7. State Farm also argues that the complaint does  
19 not include allegations or facts that could be interpreted as a violation of any of the subparts of  
20 § 686A.310. It posits that the UCPA was intended to provide relief for acts that an insurer  
21 engaged in during the handling of the claim but that the present conflict stems from an alleged  
22 failure to pay, which is covered by Braden’s breach of contract claim.

1       Braden responds that she is not required to specify which subsections were violated  
2 because the court and State Farm can draw reasonable inferences from the allegations in the  
3 complaint that State Farm violated § 686A.310(c) and § 686A.310(e). ECF No. 8 at 6-8. A

4       The Complaint alleges that State Farm “among other things, fail[ed] to effectuate prompt,  
5 fair, and equitable settlements of claims in which liability of the insurer has become reasonably  
6 clear, and fail[ed] to adopt and implement reasonable standards for the prompt investigation and  
7 processing of claims arising under insurance policies.” ECF No. 1 at 6. This language mirrors  
8 subparts (e) and (c) of § 686A.310, and it can be reasonably inferred that Braden based her claim  
9 on these two subsections. Additionally, the supporting facts presented in the complaint are  
10 sufficiently support her claim and are not mere recitals of the elements of the cause of action. I  
11 therefore deny State Farm’s motion to dismiss Braden’s claim for violations of the UCPA.

#### 12 **IV. UNJUST ENRICHMENT**

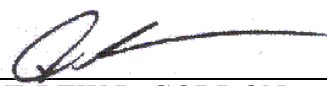
13       State Farm argues that a claim for unjust enrichment can survive only if there is an  
14 implied agreement between the parties, and it therefore must fail if there is an express agreement.  
15 State Farm contends that because Braden alleges that there is a valid contract between the  
16 parties, she cannot assert a claim for unjust enrichment. State Farm further posits that even  
17 though the claim is pled in the alternative, the claim must fail because Braden does not allege  
18 any facts in the alternative suggesting that there was never a contract between the parties. ECF  
19 Nos. 6 at 7-8; 11 at 4-5. Braden responds that she can plead alternative and even inconsistent  
20 claims under Federal Rule of Civil Procedure 8(d)(2)-(3)’s liberal pleading policy. And although  
21 she will ultimately not be able to recover on both theories, dismissal is inappropriate at this stage.  
22 ECF No. 8 at 8-10.

1 “An action based on a theory of unjust enrichment is not available when there is an  
2 express, written contract” between the parties. *Leasepartners Corp. v. Robert L. Brooks Trust*,  
3 942 F.2d 182 (Nev. 1997). However, Federal Rule of Civil Procedure 8(d)(2)-(3) permits “[a]  
4 party [to] set out 2 or more statements of a claim or defense alternatively or hypothetically” and  
5 “state as many separate claims . . . as it has, regardless of consistency.” This includes  
6 simultaneous claims for breach of contract and unjust enrichment. *See Marquis Aurbach Coffing*,  
7 *P.C. v. Dorfman*, No. 2:15-cv-00701-JCM-NJK, 2015 WL 6174346, at \*4 (D. Nev. 2015)  
8 (“[A] party may state a claim for breach of contract, premised on the existence of a valid  
9 contract, and state a claim for unjust enrichment, premised on the nonexistence of a valid  
10 contract.”). Braden explicitly pleads her unjust enrichment claim in the alternative, and she  
11 presents alternative facts that sufficiently support the claim. Unlike some cases in this District  
12 where the court dismissed unjust enrichment claims, Braden appears to believe that the existence  
13 of the contract may still be disputed by the parties. *See Schmall v. Gov. Employees Ins. Co.*, 240  
14 F. Supp. 3d 1093, 1098 (D. Nev. 2016); *Ins. Co. Penn. v. Three Square*, No.: 2:14-cv-00344-  
15 GMN-CWH, 2016 WL 6106720, at \* 2 (D. Nev. Oct. 18, 2016). If State Farm stipulates to the  
16 existence of the contract, it can move for summary judgment on the unjust enrichment claim. At  
17 this point, however, I deny State Farm’s motion to dismiss that claim.

18 **V. CONCLUSION**

19 IT IS THEREFORE ORDERED that State Farm’s motion to dismiss (**ECF No. 6**) is  
20 **DENIED.**

21 DATED this 20th day of May, 2019.

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ANDREW P. GORDON  
UNITED STATES DISTRICT JUDGE